

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1698.01
COMPLAINT INVESTIGATOR:	Jane Taylor-Holmes
DATE OF COMPLAINT:	February 23, 2001
DATE OF REPORT:	March 23, 2001
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	May 25, 2001

COMPLAINT ISSUES:

Whether the Carmel Clay Schools and the Hamilton-Boone-Madison Special Services Cooperative violated:

511 IAC 7-29-1(f) with regard to the school's alleged failure to provide educational services to a student with a disability who has been suspended from school for more than ten cumulative instructional days in a school year.

511 IAC 7-27-4(c)(3) with regard to the school's alleged failure to ensure the case conference committee considered strategies, including positive behavioral interventions and supports, to address a student's behavior that impedes the student's learning or the learning of others.

During the course of the investigation, the following issues were identified:

511 IAC 7-29-4(f) with regard to the school's alleged failure to terminate the student's suspension upon the case conference committee's determination that the student's misconduct was a manifestation of the student's disability.

511 IAC 7-3-50 with regard to the school's alleged failure to include the student's teacher of record at the CCC meeting convened on April 26, 2000.

FINDINGS OF FACT:

1. The student (the "Student") is seven years old and is in the first grade. The Student is eligible for special education and related services as a student with an emotional handicap ("EH").
2. The Student's IEP for the 2000-2001 school year was developed on April 26, 2000. The case conference committee (CCC) participants included a single special education teacher, who was not assigned as the Student's teacher of record and is not licensed in the area of the Student's disability.
3. The April 26, 2000, IEP included general education instruction for most of the instructional day with individualized instruction or related services to be provided in a resource room for part of the day. The Student began the 2000-01 school year in a general education classroom at the local elementary school ("School A"). On February 20, 2001, the CCC determined the student should be placed in an inclusion program specifically to address student behavior problems in another elementary school ("School B").

4. The Student was suspended for one day on November 10, 2000, and incurred a two-day suspension on November 21 and 22, 2000. The Student was suspended for ten consecutive days beginning January 16, 2001, to January 29, 2001. The Complainant reported that the Student's suspensions in November and January were due to temper tantrums.
5. The *CCC Report* dated December 6, 2000, includes pages from a functional behavioral assessment (FBA) conducted between November 16 and December 5, 2000. The FBA describes the behaviors of concern as refusal to comply, tantrums, and physical aggression.
6. The December 6, 2000, *CCC Report* also includes two pages of a three-page "IEP Behavioral Intervention Plan" (BIP) developed on December 5, 2000, as the result of the FBA. Although the BIP identifies target and replacement behaviors consistent with the FBA, it fails to identify any interventions to be used to change the target behaviors of non-compliance, tantrums, and physical aggression. The CCC did not complete the third page of the BIP on which these interventions are to be identified.
7. The CCC met on January 24, 2001. The "Discussion Summary" (Summary) of the *CCC Report* indicates that the CCC discussed the events that prompted the Student's suspension. The Summary contains no specific information about conducting a functional behavioral assessment or reviewing information from an existing functional behavioral assessment, but includes the following statement: "Behavior Assessments: Reports turned in before conference by parents, [the general education teacher's] responses were shared." The Summary indicates that when the Student returns to School A, a plan needs to be in place, and states "Behavioral plan in place." No BIP is included with the January 24, 2000, *CCC Report*, and the School states that the behavioral plan referenced is the BIP included in the December 6, 2000, *CCC Report*. The January 24, 2001 *CCC Report* identified the following activities as part of the plan to be in place when the Student returned to School:
 - a. first-grade rules with no stoplights;
 - b. offer time outs, such as have the Student "go to Spanish or go see [resource teacher];" and
 - c. call Student's father if help is needed for assistance when the Student is making choices.
8. The special education cooperative's director (the "Director") reported that the principal, the resource teacher, and the classroom teacher consulted to determine the extent to which services were necessary to meet the Student's needs. The two teachers subsequently gathered materials and sent them to the Student's home during the Student's ten-day suspension.
9. The Complainant reported that she made several attempts to get the homework for the Student while he was suspended. The Complainant contends that the local school corporation's director of special education called the Complainant on January 25, 2001, and informed the Complainant that the Student's homework materials were ready. The Complainant subsequently picked up the homework materials later that day. January 25, 2001, was the eleventh cumulative day of suspension for the Student. On January 30, 2001, the Student returned to School A after serving the ten-day suspension.
10. The Student was suspended again beginning February 13, 2001, until February 26, 2001. February 19, 2001, was a school holiday.
11. The CCC met on February 19, 2001, to determine whether the Student's behavior was a manifestation of his disability. The CCC determined that the Student's disability impaired his ability to control his behavior. The FBA from November and December 2000 was reviewed, as was the

incomplete BIP from the December 6, 2000 CCC Report. The CCC also reviewed the results of the Student's recent psychoeducational evaluation and the strategies that had been used to address the Student's behavioral needs.

12. The CCC met on February 20, 2001, to review and revise the Student's individualized education program (the "IEP"). The CCC agreed to pursue an independent evaluation (at the local school corporation's expense) because the School's recent evaluation did not completely support an earlier independent evaluation's diagnosis of autism that the Complainant had presented. The Student is scheduled to begin the new independent evaluation process on April 23, 2001. The CCC also discussed placing the Student on homebound or at School B. The Student's teachers expressed concern about placing the Student on homebound because of the lack of socialization that would ultimately occur. The principal of School A and the Student's classroom teacher shared strategies that have been tried with the Student, and School personnel determined that the Student's educational needs could best be met in a very structured setting such as School B. The Complainant was not in agreement with placing the Student at School B.
13. The Complainant reported that during the February 20, 2001, CCC meeting she was informed that the Student continued to be suspended until February 27, 2001. The Student's attendance record indicates that his last day of suspension was February 26, 2001. The Student's first day at School B was on February 27, 2001.
14. The Director reported that the Student's classroom teacher gathered all of his books and materials to use at home and offered to be available during the February suspension.
15. On February 23, 2001, the Complainant went to School A and gave written consent for the Student to attend School B. The Complainant also submitted a written opinion to the CCC Report. The Complainant further reported that when she went to the School on February 23, 2001, she was given homework to take home for the Student to complete.

CONCLUSIONS:

1. 511 IAC 7-29-1(f) requires the school to provide services to a student with a disability who has been suspended for more than ten cumulative days in a school year and requires the services provided to enable the student to progress appropriately in the general curriculum and to advance appropriately toward achieving IEP goals. It also requires the School to develop a plan for and conduct an FBA or review an existing BIP. Findings of Fact #4, #9, and #10 reflect that the Student was suspended for more than ten cumulative school days during the school year. Finding of Fact #3 indicates that the Student required individualized instruction in a resource room as well as instruction in the general education classroom. Findings of Fact #8, #9, #14, and #15 demonstrate that the school gathered classroom homework materials for the Student for the January and February periods of suspension and offered to make the classroom teacher available for the February suspension. The Student received no instruction to enable him to progress in the general curriculum or to advance his achievement toward IEP goals. 511 IAC 7-17-64 requires instruction as part of special education services. Providing the Student with homework during the period of suspension and offering to make the classroom teacher available do not satisfy the requirement to provide services to a student. **A violation of 511 IAC 7-29-1(f) is found with respect to the School's failure to provide services.** Further, even if providing homework assignments had been sufficient, Findings of Fact #9, #10, and #15 indicate that the School failed to provide the homework assignments on the first day of the February suspension, which was the fourteenth cumulative day of the Student's suspension. **A violation of 511 IAC 7-29-1(f) is found with respect to failing to provide services after the tenth cumulative day of suspension.** Findings of Fact #5 and #6 reflect that, although an FBA was completed and a BIP was initiated, the BIP was never completed. The BIP

that the School contends was in place at the time of the January suspension, was incomplete. Finding of Fact #7 demonstrates that the January 24, 2001, CCC did not conduct a new FBA nor did it revise the existing, although incomplete, BIP. The next time the CCC convened was February 19, 2001. Ten business days from the tenth cumulative day of suspension elapsed on February 8, 2001. **A violation of 511 IAC 7-29-1(f) is found with regard to the School's failure to comply with 511 IAC 7-29-5.**

2. Findings of Fact #5 and #6 indicate that, at the December 6, 2000 CCC meeting, the CCC identified problems, but a BIP was not completed. There is no indication of the type of interventions or strategies considered to address the student's problem behaviors. Therefore, a violation of 511 IAC 7-27-4(c)(3) occurred.
3. Finding of Fact #11 indicates that, on February 19, 2001, the CCC determined the behavior for which the Student was suspended on February 13, 2001, was a manifestation of his behavior. Finding of Fact #13 reflects that, despite the manifestation determination, the student remained suspended until February 26, 2001. Therefore, a violation of 511 IAC 7-29-6(g) is found.
4. Finding of Fact #2 reflects that the Student's teacher of record did not attend the April 26, 2000, CCC meeting. Therefore, a violation of 511 IAC 7-3-50 is found.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

1. Convene the CCC to discuss compensatory services for the instructional days that the Student lost as a result of the suspensions. The student's teacher of record shall attend the CCC meeting as required by 511 IAC 7-17-72. A copy of the CCC Report and IEP indicating the amount of services, where the services will be provided, and when the services will begin shall be submitted to the Division no later than April 27, 2001.
2. Conduct an inservice training with all local school corporation professional personnel regarding the following:
 - a. 511 IAC 7-29-1, including the requirement that services provided during the period of suspension cannot be limited to providing homework.
 - b. 511 IAC 7-29-5.
 - c. 511 IAC 7-29-6, including the requirement that a suspension or expulsion must cease immediately upon a determination that the misconduct is a manifestation of the student's disability.
 - d. 511 IAC 7-27-4(c).A copy of the inservice training agenda and any materials disseminated, along with a sign-in sheet of attendees by name and title, shall be submitted to the Division no later than April 27, 2001.
3. Submit an assurance statement signed by the local school corporation's director of special education assuring that:
 - a. the procedures required by 511 IAC 7-29-5 shall be implemented in applicable circumstances; and
 - b. the suspension or expulsion of a student shall cease upon the case conference committee's determination that the student's misconduct is a manifestation of the student's disability.A copy of the assurance statement shall be submitted to the Division no later than April 27, 2001.

4. Submit an assurance statement from the Student's teacher of record that she is aware of a teacher of record's responsibilities, as detailed in 511 IAC 7-17-72 and 511 IAC 7-27-7(b), and that she will carry out those responsibilities accordingly. A copy of the signed assurance statement shall be submitted to the Division no later than April 27, 2001.